

IOWA ETHICS AND CAMPAIGN DISCLOSURE BOARD

An Independent Agency of the Executive Branch

Michael E. Marshall
Executive Director
& Legal Counsel

510 East 12th, Suite 1A
Des Moines, Iowa 50319
Telephone 515-281-4028/Fax 515-281-4073
www.iowa.gov/ethics

BOARD MEMBERS:
James Albert, Chair
John Walsh, Vice Chair
Carole Tillotson
Jonathan Roos
Mary Rueter
Elaine Olson

Meeting Minutes

Thursday, August 12, 2021, at 1:00 p.m.
Ola Babcock Miller Building, Room 300
1112 E. Grand Ave., Des Moines, Iowa

I. **CALL TO ORDER**

Roll call, present are John Walsh, Carole Tillotson, Jonathan Roos, Mary Rueter, Elaine Olson, Jim Albert. Also in attendance: Mike Marshall, Cohl Bultje, Jason Hacker, Nancy Wood and Laura Belin – reporter,

II. **APPROVAL OF MINUTES**

Open and Closed session minutes of meeting held on May 26, 2021.
Motion by Mary Rueter and seconded by Elaine Olson. Approved unanimously.

III. **DIRECTOR'S UPDATE (Legislative, admin. rules, WRS upgrade)**

The Governor signed the second request for the additional \$500,000 for our web reporting service. We will be able to test the program in a couple of months. An ultimate delivery date is expected by the end of February, early March of 2022.

IV. **REQUESTS FOR WAIVER OF CIVIL PENALTIES (RULE 351 IAC 4.60)**

STATE COMMITTEES (Rule 351 IAC 4.59(3))

Black Conservatives for Iowa

Motion by Elaine Olson to approve a partial waiver for Black Conservatives for Iowa.
Second by John Wash. Motion carries to reduce the penalty from \$500 to \$100

VII. **ADMINISTRATIVE RULES—Proposed Notice of Intended Action**

Rules Proposal - 68B.4 prohibits any elected officials to sell goods and services to any entity that is regulated by their agency, and then it provides an exception. The exception is the employee or official will have to get consent from their department ensuring three other conditions are met: The duties of the employee do not involve the regulation of the entity that they are selling or leasing to. That the selling or leasing of those goods will not include advocacy for that department. Also does not allow the employee to sell goods or services back to that agency or department. Basic conflict provisions are provided. The bill now includes the selling or leasing of property.

Motion by John Walsh, second by Elaine Olson to move the rules forward for adoption.
Motion carries.

VIII. **DISCUSSION RE PROPOSALS FOR 2022 LEGISLATIVE SESSION**

IX. **CLOSED SESSION**

In accordance with the provisions of Iowa Code 21.5(1) "c" and "g", the Board may move into closed session to discuss:

Heritage Action lobbying investigation

Dan Kelley proceeding

Allegations by Auditor Sand against Gov. Reynolds regarding Iowa Code section 68A.405A

Adjourn to close session at 12:45 pm

IX. **RETURN TO OPEN SESSION-** Review of Discussion in Closed Session and entertain motions
Returned to open at 1:30 pm.

We will summarize our discussion in closed session starting with Heritage Action. The Board opened an investigation in May for Heritage Action for America after it was reported that its Executive Director told supporters that that organization had worked quietly with the Iowa State Legislature, quote, "We helped draft bills. We were able to get three provisions in the integrity bill that were directly written by Heritage, so Iowa is a huge victory." Governor Reynolds signed the bill on March 8th.

The statement by the Executive Director of Heritage Action lead the Board to conduct an investigation because Heritage Action did not register with the Iowa Ethics Board to lobby the Governor or the Executive Branch. The references in her statement in their lobbying efforts did not fall within our jurisdiction. Our jurisdiction reaches only the executive branch and not the legislative branch. So the question was whether Heritage Action of America violated Iowa law by lobbying the Governor's office, the Secretary of State, or any Iowa Executive Branch, Office, Agency or Official in urging the passage of the statute that the Governor signed with respect to changes in Iowa's voting procedures. We were told in closed session by our two attorneys that they have investigated this fully. They were given access to all of the Governor's emails to and from Heritage Action. They told us that they even had the cooperation of the Office of Chief Information's Chief Officer, who ran a search of all emails from Heritage Action to every Executive Branch Agency. What was unearthed in all of this was just one additional copy of an email that the Governor had already provided us, that in no way constituted any lobbying of the Governor's office. Our staff found no evidence at all of Heritage Action lobbying the Governor's office, secretary of state or any other Executive branch agency. Because of that the discussion centered on whether the investigation should be closed in finding no violation of Iowa law on the part of Heritage action.

Motion by John Walsh that we close the investigation of the Heritage Action of America case with the finding that were able to determine no lobbying efforts directed toward the Governor's Office. Second by Mary Rueter. No further discussion, Motion carries.

The second matter discussed is related to a case before the Board involving Dan Kelly for State Representative committee. A campaign mailer was distributed to most mailboxes in Warren County opposing another candidate for office. It contained an inaccurate attribution statement, paid for by statement. The campaign mailer stated that Dan Kelly committee paid for the mailer, in reality that wasn't true. The failure to properly attribute to who paid for that mailer, constituted a violation. Iowa law which is the attribution law, requires candidates for office and those who distribute campaign materials to disclose to voters and those that receive them, who paid for that. The Board's attorneys discussed their investigation and the conclusion of their investigation was that Mr. Kelly's violation of this was technical and unintentional. He reported it on a disclosure statement, but allowed the use of his committee on the mailer. Typically the penalty for not properly attributing a campaign promotional piece is requiring it to be corrected. Since it is too late for that, the appropriate penalty would be a monetary fine and a reprimand for violation statement rule would consistent with how they were handled in the past. We recognize that the candidate committee to why this mailer was sent has already been dealt with by this Board seriously.

Motion by Elaine Olson to impose a \$100 penalty to the Dan Kelly Committee for violation of the Iowa attribution statement law. Second by John Walsh. No further discussion, all ayes, motion carries.

Lastly in closed session the Board considered the allegation by the state auditor that the governor violated the Iowa statutory prohibition against self-promotion in an advertisement. The specific allegation on the part of the state auditor was that in paid advertisements by the state of Iowa that appear on television, radio and social media, Governor Reynolds as well as former Governor and Secretary of state and other well know known Iowans appeared in a one minute step up stop the spread public service announcement. Governor Reynolds appeared on screen for 10 seconds. Her name and title were displayed on the screen and she states in the video "covid 19 isn't stronger than Iowans resolve to overcome it." The commercial turns to other speakers including Secretary Vilsack and the other speakers encouraged handwashing, social distancing, disinfecting, getting tested for covid and getting a flu shot. Toward the end of the video, Governor Reynolds says "If you do have covid 19, isolate from others to avoid spreading the virus." The state auditor alleges that the Governor's appearance in that public service announcement violates Iowa's statute prohibiting self-promotion by public officials in commercials that tax payers of Iowa pay for. Specifically the auditor claims that self-promotion statutory 68a.405a entitled self-promotion with tax payer funds is prohibited. The Board's two attorneys noted that the first eight words of that law gave the Governor express permission to do what she did. The first eight words in that statute are "except as provided in section 29c.3 and 29c.6 an elected state official can't appear in advertisements paid for by the tax payers of Iowa." Those two statutory exceptions relate to public health disasters 29c.6.1, "provide after finding a disaster exists or is threatened a Governor can proclaim a state of disaster emergency that emergency disaster declaration constitutes public disasters, that such emergency could include the public health disaster." The Governor issued an emergency proclamation concerning the public health threat posed by covid. Then she rallied former Governor Vilsack and other well-known Iowans to appear in this commercial to alert Iowans to this public health disaster. The Board's attorneys stated the ad was not just reasonably delivered but the subject matter of that emergency declaration was all that that commercial related to. The Ad complied with the self-promotion statute in the first eight words.

Motion by Jonathan Roos based upon Board and legal counsel analysis with reference to chapter 68a.405a and 29c of the Iowa code, I move that the Board find Governor Reynolds did not violate Iowa law as alleged by State Auditor Sand regarding the advertisement of “step up and stop the spread” media campaign. Second by Mary Rueter. No further discussion, all ayes, motion carries.

X. **ADJOURNMENT**

Motion to adjourn by John Walsh. Second by Mary Rueter.
Approved unanimously. The Board adjourned at 1:53 pm

Respectfully submitted,

Nancy Wood

Nancy Wood, Executive Secretary

Approved 11/18/2021